

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARRY KAPLAN and U.S. POSTAL SERVICE,
AIRPORT MAIL FACILITY, Jamaica, NY

*Docket No. 99-782; Submitted on the Record;
Issued May 18, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that he sustained cervical herniated discs causally related to factors of his federal employment.

On May 23, 1997 appellant, then a postal clerk, filed a notice of occupational disease and claim for compensation alleging that he sustained cervical herniated discs while performing his duties of loading and unloading mail and lifting and hauling heavy sacks and parcels. Appellant alleged that he experienced pain associated with the claimed condition on February 24, 1997 and worked intermittently from then until he was later restricted to light-duty work and finally determined fully disabled on November 24, 1998.

On June 6, 1997 appellant submitted a personal statement and medical records which included progress notes from Dr. Manfred Hahn, a Board-certified neurologist, and Dr. Alejandro Eisma, a Board-certified family practitioner, for treatment received between February 25 to May 22, 1997 at the Queens-Long Island Medical Group.

Appellant alleged in his statement to the Office of Workers' Compensation Programs that during the fall and winter of 1996 he began feeling pain and spasms in his left hand. Appellant stated that on February 24, 1997 his pain was so excruciating that he could not move his arm. Appellant further stated that his position which required lifting and hauling heavy sacks and parcels, and standing and operating a terminal for extended periods of time put a strain on his arm and hand.

Appellant submitted a medical note from Dr. Eisma dated February 25, 1997 which indicated that he was seen on an urgent care basis for pain in his left shoulder after trying to push a disabled car. Dr. Eisma diagnosed appellant with muscle strain in the February 25, 1997 report and noted that appellant had a prior injury to his left arm resulting from a 1994 motor vehicle accident. Appellant was seen again on March 3, 1997 by Dr. Eisma who indicated appellant had recurrent left arm pain and wrote "? cervical radiculopathy" in his notes. On March 6, 1997 a

computerized tomography (CT) scan was performed on appellant of the cervical spine which showed a normal vertebrae and intervertebral disc spaces. On March 13, 1997 Dr. Eisma diagnosed appellant with cervical muscle strain from pain with no known etiology that began four months prior. On April 7, 1997 Dr. Hahn reported that appellant's pain was "same as injury in [19]94." Dr. Hahn noted "no specific injury" in his report; however, he did indicate that appellant lifted heavy weights at work. On May 12, 1997 Dr. Eisma reported in a medical note that appellant suffered from herniated discs at C4-5, C5-6, C6-7.

By letter dated June 2, 1997, appellant's employing establishment submitted information regarding appellant's leave history to the Office and noted that appellant had not worked in several months due to "personal business and a 'virus.'"

By letter dated July 1, 1997, the Office informed appellant that his claim was insufficient because the medical conditions alleged appeared to be due to a motor vehicle accident in 1994 and recently pushing a disabled car in February 1997. The Office informed appellant of additional factual and medical evidence necessary to establish his claim including a detailed description of the employment-related activities believed to have caused his condition, and all activities performed outside of his federal employment.

By letter dated July 12, 1997, appellant responded that he did nothing out of the ordinary in February 1997 when he pushed the disabled car, and that he had not been diagnosed with herniated discs after his 1994 motor vehicle accident. Appellant reiterated in his July 12, 1997 letter the factors of employment previously submitted to the Office, which he believed caused his condition.

By decision dated September 2, 1997, the Office denied appellant's claim on the grounds that appellant failed to establish that he sustained employment-related cervical herniated discs as alleged. The Office found that none of the medical evidence causally related factors of appellant's employment to the condition implicated in his claim.

On September 28, 1997 appellant requested an examination of the written record through the Branch of Hearings and Review.

The Office subsequently received updated medical reports from Dr. Hahn and reports summarizing two magnetic resonance imaging (MRI) scans dated May 5 and October 9, 1997 performed on May 3 and October 8, 1997. The MRI reports revealed disc herniations at C4-5, C5-6 and C6-7. A letter dated November 24, 1997 from Dr. Hahn was submitted that summarized appellant's examination and treatment, diagnosed him with large central disc herniation as shown on the MRI and determined appellant fully disabled due to his cervical disc pathology and significant cervical radiculopathy. In a note submitted to the Office dated May 15, 1997, Dr. Hahn wrote that appellant had a number of cervical discs secondary to heavy lifting.

On December 11, 1997 the Office requested from appellant's employing establishment additional evidence material to the work-related injury allegedly sustained by appellant. Appellant's employing establishment responded by letter on December 19, 1997 that it considered appellant's claim "suspect" and that it had no information to offer to the case record.

By decision dated February 13, 1998, the Office hearing representative affirmed the September 2, 1997 decision denying appellant's claim for compensation for failure to establish that he sustained a cervical injury causally related to his employment duties.

The hearing representative pointed out that appellant had not submitted medical reports, which contained a complete factual and medical background of appellant and a rationalized opinion that his condition was caused or aggravated by the implicated employment factors. The hearing representative noted appellant's urgent care visit to Dr. Eisma on February 25, 1997 for left arm pain after pushing a disabled vehicle, the day after appellant alleged excruciating pain associated with work-related duties. The hearing representative also noted appellant's history of injury to his left arm and back following the 1994 motor vehicle accident and that Dr. Hahn in his April 7, 1997 report described appellant's current symptoms by referring to appellant's accident and stated, "same as injury in [19]94." The hearing representative determined on review of the written record that appellant failed to submit rationalized medical opinion evidence sufficient to establish the claim.

In a letter dated July 27, 1998, appellant requested reconsideration. Appellant submitted with his request a medical report with the same date from Dr. Hahn and results from electromyography (EMG) and nerve conduction velocity (NCV) tests dated August 22, 1994. Dr. Hahn's letter noted that after appellant's 1994 motor vehicle accident there was no indication of cervical spine injury, and his unrelated work activity in 1997 should not have given a cervical disc pathology.

By decision dated September 10, 1998, the Office denied modification of the prior decision. The Office noted that the test results submitted were simply diagnostic in nature and that neither addressed the relevant medical issue of causal relationship. The Office further noted that Dr. Hahn's July 27, 1998 letter reiterated information found in a previous opinion and it did not constitute a rationalized medical opinion explaining the relationship between the diagnosed condition and specific factors identified by appellant. The Office found in its decision to deny modification that, since the deficiencies previously identified in the record had not been properly remedied, there still remained insufficient probative medical evidence to establish appellant's claim.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet his burden of proof that he sustained cervical herniated discs causally related to his employment duties.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.¹ These are the essential

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

In an occupational disease claim such as this, claimant must submit: (1) medical evidence establishing the existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the disease; and (3) medical evidence establishing that the employment factors were the proximate cause of the disease or, stated differently, medical evidence that the diagnosed condition is causally related to the employment factors identified by claimant.³

The medical evidence required is generally rationalized medical opinion evidence which includes a physician's opinion of reasonable medical certainty based on a complete factual and medical background of the claimant and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by claimant.⁴ Neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that the condition was caused by his employment is sufficient to establish a causal relationship.⁵

In this case, appellant has submitted medical evidence diagnosing his condition of cervical herniated discs. The results of an MRI were submitted which revealed appellant's herniated discs at C4-5, C5-6, C6-7, and subsequent medical notes, along with Dr. Hahn's November 24, 1997 letter referred to appellant's diagnosed condition. Appellant has alleged that the pain he first experienced in his hand in November 1996 and the excruciating pain experienced on February 24, 1997 were caused by the loading and unloading and lifting and hauling required by his federal employment. Appellant further alleged that his motor vehicle accident in 1994 and his activity of pushing a disabled car in 1997 had not caused or contributed to his diagnosed condition.

The medical evidence of record, however, is insufficient to establish a causal relationship between the claimed condition and appellant's federal employment.⁶ Appellant's allegation that he suffered from excruciating pain on February 24, 1997 attributed to factors of his employment is discredited by the medical record which established that appellant was seen by Dr. Hahn on February 25, 1997 for what was reported as pain after pushing a disabled vehicle. Dr. Hahn never mentioned in this report any of the factors of employment appellant had alleged in his claim for compensation, or even generally that his work duties could have brought on an onset of similar pain.

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Jerry D. Osterman*, 46 ECAB 500 (1995); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ *Victor J. Woodhams*, *supra* note 3.

⁵ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁶ *Walter D. Morehead*, 31 ECAB 345 (1989).

Second, the reports given by Drs. Eisma and Hahn lack medical opinions that explain the nature of the relationship between the diagnosed cervical disc condition and the specific employment factors identified by appellant. The medical record contains two notations on April 7 and May 15, 1997 regarding factors of employment alleged by appellant, namely that appellant lifted heavy weights at work and that he had a number of cervical discs secondary to heavy lifting; however, these references are speculative as they are unsupported by rationale. The physicians should have addressed the specifics, both factual and medical of appellant's case.⁷ None of the medical evidence of record explains how appellant's duties of loading and unloading mail and hauling sacks of mail would have caused the diagnosed herniated disc condition, or when, in fact, appellant sustained such injury. The Board has held that a physician's opinion is not dispositive simply because it is offered by a physician.⁸ To be of probative value to appellant's claim, the physician must provide a proper factual background and must provide medical rationale which explains the medical issue at hand, be that whether the current condition is disabling or whether the current condition is causally related to the accepted employment injury. Where no such rationale is present, the medical opinion is of diminished probative value. The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship. Neither the fact that the condition became apparent during a period of employment nor the belief of the employee that the condition was caused or aggravated by employment factors is sufficient to establish causal relation. Causal relationship is a medical issue that can be established only by medical evidence.⁹

⁷ *William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ *See Michael Stockert*, 39 ECAB 1186 (1988).

⁹ *Ruth C. Borden*, 43 ECAB 146 (1991).

The decisions of the Office of Workers Compensation Programs dated September 10 and February 13, 1998 and September 2, 1997 are affirmed.

Dated, Washington, D.C.
May 18, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member